

SENATE RECORD VOTE ANALYSIS

104th Congress
1st Session

Vote No. 92

February 28, 1995, 4:42 p.m.
Page S-3277 Temp. Record

BALANCED BUDGET AMENDMENT/Majority Vote Deficit Spending

SUBJECT: A Resolution Proposing a Balanced Budget Amendment to the Constitution of the United States . . . H.J. Res. 1. Hatch motion to table the Byrd amendment No. 252.

ACTION: MOTION TO TABLE AGREED TO, 69-31

SYNOPSIS: Pertinent votes on this legislation include Nos. 62-63, 65-91, and 93-98.

As passed by the House, H.J. Res. 1, a resolution proposing a Balanced Budget Amendment to the Constitution, is virtually identical to the balanced budget constitutional amendment that was considered last year by the Senate (see 103d Congress, second session, vote Nos. 47-48). The resolution: will require a three-fifths majority vote of both Houses of Congress to deficit spend or to increase the public debt limit; will require the President's annual proposed budget submission to be in balance; and will require a majority of the whole number of each House to approve any bill to increase revenue. Congress will be allowed to waive these requirements for any fiscal year in which a declaration of war is in effect. Congress will enforce and implement this amendment by appropriate legislation. The amendment will take effect in fiscal year 2002 or with the second fiscal year beginning after its ratification, whichever is later. The States will have 7 years to ratify the amendment.

The Byrd amendment would strike the provision in the resolution stating that total outlays may exceed total receipts in any fiscal year only if three-fifths of the whole number of each House of Congress provide by law for a specific deficit amount by a rollcall vote, and would replace it with a provision allowing deficit spending by simple majority votes.

Debate was limited by unanimous consent. Senator Hatch moved to table the Byrd amendment. Generally, those favoring the motion to table opposed the amendment; those opposing the motion to table favored the amendment.

Those favoring the motion to table contended:

The supermajority vote requirements in this constitutional amendment are in furtherance of the principle that transient majorities should not burden future generations with debt. This is not a mere matter of policy, but a principle upon which our Nation was

(See other side)

YEAS (69)			NAYS (31)			NOT VOTING (0)	
Republicans (52 or 98%)	Democrats (17 or 36%)		Republicans (1 or 2%)	Democrats (30 or 64%)		Republicans (0)	Democrats (0)
Abraham	Hutchison	Baucus	Packwood	Akaka	Kennedy		
Ashcroft	Inhofe	Biden		Boxer	Kerrey		
Bennett	Jeffords	Bingaman		Bradley	Kerry		
Bond	Kassebaum	Bryan		Breaux	Lautenberg		
Brown	Kempthorne	Campbell		Bumpers	Leahy		
Burns	Kyl	Conrad		Byrd	Levin		
Chafee	Lott	Exon		Daschle	Lieberman		
Coats	Lugar	Feinstein		Dodd	Mikulski		
Cochran	Mack	Graham		Dorgan	Moynihan		
Cohen	McCain	Heflin		Feingold	Murray		
Coverdell	McConnell	Hollings		Ford	Pell		
Craig	Murkowski	Kohl		Glenn	Pryor		
D'Amato	Nickles	Moseley-Braun		Harkin	Rockefeller		
DeWine	Pressler	Nunn		Inouye	Sarbanes		
Dole	Roth	Reid		Johnston	Wellstone		
Domenici	Santorum	Robb					
Faircloth	Shelby	Simon					
Frist	Simpson						
Gorton	Smith						
Gramm	Snowe						
Grams	Specter						
Grassley	Stevens						
Gregg	Thomas						
Hatch	Thompson						
Hatfield	Thurmond						
Helms	Warner						

EXPLANATION OF ABSENCE:

- 1—Official Business
- 2—Necessarily Absent
- 3—Illness
- 4—Other

SYMBOLS:

- AY—Announced Yea
- AN—Announced Nay
- PY—Paired Yea
- PN—Paired Nay

founded. Senators who contend that the purpose of the Constitution is to guarantee majority rule display a marked misunderstanding of the purpose of this great document. The Constitution serves as protection for the people, especially minorities, from the tyranny of a majority in government. For most of this Nation's history the tacit principle held that a current Congress should not pile up debt for future generations to pay. For several systemic reasons, that principle is no longer followed, though it is still supported by Members. This balanced budget constitutional amendment will restore original intent through the use of supermajority vote requirements. Striking these requirements would destroy the value of this amendment. No fiscal discipline would result, and Congress would be unable to stop itself from bankrupting the Nation. The pending Byrd amendments to strike these requirements must therefore be vigorously opposed.

When the Constitution was drafted the issue of deficit spending was debated. The argument was raised that unless the Constitution clearly limited the ability of the Federal Government to borrow from future generations, a time would come when the legislature would find that it could meet the demands for greater spending and lower taxes by borrowing money from as yet unborn, and thus not voting, generations to pay. In the words of Thomas Jefferson: "The question whether one generation has the right to bind another by the deficit it imposes is a question of such consequence as to place it among the fundamental principles of government. We should consider ourselves unauthorized to saddle posterity with our debts, and morally bound to pay them ourselves." In the end, a specific prohibition was not included because it was felt that it was not needed, not because it was opposed. A majority of the Framers decided that the limited size and enumerated powers of government, the limits on the money supply created by a gold standard, the moral imperative of the "unwritten Constitution," and the House's exclusive power to originate bills raising revenue all would act to prevent the accumulation of debt.

The whole purpose of the Constitution, in general, is to limit the power of the Federal Government. If majority rule were the fundamental principle of our Government, as some Senators have stated in this debate, then we would not have the Government which we have. We would have a unicameral parliamentary system without judicial review and, indeed, without a Bill of Rights or even a written Constitution, because each of those features of our Government is an intrusion into the principle of majority rule. James Madison explained this point thusly: "Government (is) the greatest of all reflections of human nature. If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government that is to be administered by men over men, the great difficulty lies in this: You must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is no doubt the primary control on government; but experience has taught mankind the necessity of auxiliary precautions." The Constitution is an amalgamation of auxiliary precautions. It divides government into separate branches, it delimits those powers which the Federal Government may exercise (a majority vote or even a unanimous vote cannot lay claim to a power that the Government does not have) and it specifies which branch may exercise which powers. Some matters may be decided by majority votes, others have supermajority vote requirements, and some cannot even be made by unanimous votes. For example, an unanimous vote to establish a State religion would not be constitutional. Not merely majority rule, but unanimous rule, would thus be denied.

The balanced budget amendment would institute a new auxiliary precaution. Indeed, it is a precaution against the immediate cause of the Revolutionary War--taxation without representation. A debt on future generations who have no representation in Congress is effectively a tax on those generations. To deny that protecting future generations from debt is a principle worthy of enshrinement in our Constitution is therefore a repudiation of the moral basis on which the Revolutionary War was fought and our Nation was founded.

The distinction that some Senators have tried to make between "fiscal policy" and "structure" is insupportable. The fact that it may be a "fiscal policy" decision to deficit spend on a given vote does not mean that a rule regarding all such "fiscal policy" decisions is itself a policy decision. Instead, such a rule would by definition be a "structural" decision intended to define the terms under which fiscal policy is made. For consistency's sake, if our colleagues real objection to this amendment is that it will put controls on fiscal policy, then they should also try to strike out the numerous controls on fiscal policy that are already in the Constitution. For example, they should eliminate Congress' right to collect taxes, duties, imposts, and excises, they should eliminate the income tax, and they should do away with the right to regulate commerce.

For 150 years the right to borrow money was exercised by Congress by simple majority votes without violating the principle that debt should not be accumulated for future generations to pay. Those systemic restraints which the Founding Fathers thought would be sufficient to hold the debt in check worked well in practice. However, beginning with the New Deal, those restraints began to fall. The consensus on the proper size and role of the Federal Government began to change drastically. Additionally, the conventional wisdom became that fiscal policy should be used to combat economic downturns by accumulating debt, and that those debts should then be repaid in periods of economic growth. Whether one gives any credence to the efficacy of this conventional wisdom, it has only been followed in part--deficits have been run during economic downturns, but have not been paid off in periods of growth. In fact, deficits have been run in 29 of the past 30 years. Taxes have been raised enormously, but spending has never been cut. The problem is that once spending starts it creates an expectation that it must continue. Over the years, as the Federal Government has consumed an ever larger share of the economy and as expectations of it have grown even faster, deficits have risen. Those Members in Congress who have been inclined to resist pressure to spend have not been rewarded at the polls.

The situation is fast approaching a crisis point. By the year 2013, if no changes are made, spending on entitlements and to pay

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interest on the accumulated debt will consume every penny in revenue collected. The United States will have \$0 for welfare, education, roads, defense, law enforcement, or any other function.

More and more Members are coming to the realization that the Federal Government will soon be insolvent. Many Members look for others to blame, insisting that Members already have all the constitutional authority they need to balance the budget, as evinced by our country's success in its first 150 years, and that all they need now is a little will. These Members are ignoring the vast difference between then and now. They refuse to recognize the structural realities that lead to deficit spending, and are thus left only with bitter recriminations. Senators on both sides of the aisle find plenty of blame with each other over spending, because they generally represent different groups that expect to have money spent on them, but such blame games do not solve anything. We can fix this structural deficit problem by passing the balanced budget amendment, or we can continue charging for the cliff of bankruptcy like ill-tempered lemmings.

The supermajority vote requirements in this amendment will restore a structural bias against Congress spending borrowed money. Senators who argue that this requirement will result in unseemly vote trading may as well make a general indictment of Congress, because regardless of the required number of votes on any issue, there will always be Senators on the margin of a question who will likely be the deciding votes. Concessions are now commonly made to get 1 or 2 more Senators' votes when a simple majority is needed, as they are commonly made when 60 votes or a two-thirds margin is needed. Members may rail against vote-trading or they may praise the art of compromise and consensus. In all honesty, though, the adjectives one uses to describe any given vote are sometimes dictated by whether one favors the outcome that is reached.

No Senator can deny that the supermajority vote requirements in this amendment will make it more difficult for Members to impose debt on future generations. The ability of a minority of Senators to stop other Senators from the imposition of such debt is not for their benefit; it is for the benefit of those future Americans who are being taxed, through debt, without representation. We urge our colleagues to join us in opposing taxation without representation by defeating the pending Byrd amendments.

Those opposing the motion to table contended:

The supermajority requirements that are currently in our Constitution, several of which have rarely been exercised, deal either with the structure of our Government or the protections of individual rights. The supermajority requirements that are proposed in this constitutional amendment, though, are in an entirely different and an entirely inappropriate vein. Each of these requirements in this amendment will give the minority in Congress a veto over fiscal policy decisions. Such veto authority is anathema to our form of government and must be opposed.

The Constitution and amendments thereto currently contain 9 circumstances in which a two-thirds vote in one or both Houses is necessary to an action or to the making of a quorum. Specifically, two-thirds votes are required in one or both Houses to affirm the following: conviction following impeachment; expulsion of a Member; a presidential veto override; advise and consent on a treaty; a constitutional amendment; a removal of the bar on entry to Congress for having engaged in insurrection or rebellion against the United States; and a determination of whether the President is able to discharge his duties following a vice presidential declaration of presidential disability. Additionally, article, II, section 1, clause 3, and the 12th amendment which supersedes the article II provision, require a two-thirds quorum when the election of the President and/or Vice President should be decided by Congress.

Many of these provisions have rarely been exercised. One, the vote to remove a President unable to discharge his duties due to a disability, has never been exercised. This rare use is not by happenstance. The situations that most of these requirements cover were never expected to be common. Each deals either with the structure of our government or with the individual rights of high officials within the government. The protection for these officials is provided largely as a protection from other officials abusing their powers.

The balanced budget amendment before us, in contrast, will propose supermajority vote requirements for certain fiscal policy decisions. For example, it will require a three-fifths majority vote of the whole number of each House to deficit-spend in a fiscal year or to raise the limit on the debt held by the public. It will also require a majority vote of the whole number of each House to either increase revenues or to waive this balanced budget amendment when involved in a military conflict that poses a serious threat to national security.

Senators should be aware that these requirements, in practice, may be much more severe than the two-thirds requirements in the Constitution. The two-thirds requirements apply to those Senators present and voting, except for the requirements for treaties and convictions on impeachment, which apply to those Senators present. In other words, if 51 Senators vote on any of these questions, only two-thirds of those Senators voting in the affirmative will be required. For example, if 34 Senators vote for this constitutional amendment and 17 vote against, and no other Senator casts a vote, then the amendment will pass. Under this balanced budget amendment, though, nearly twice as many Senators will at a minimum be needed to raise the debt limit or deficit spend, because at least three-fifths of the whole number (60 Senators) will always be required. To raise revenue, a minimum of 51 Senators, which is many more than the minimum of 34 that is needed to convict the President on impeachment or to approve a treaty, will always be needed.

Policy decisions are made on a case-by-case basis. They are not about changing the structure of our government; they are about deciding an issue at one point in time based on present circumstances. Some Senators have suggested that some policy decisions,

such as raising revenues or deficit spending, should be rarely made and should therefore require supermajority votes. We disagree. We believe that Congress should never have its options limited when addressing fiscal questions. The balanced budget amendment reflects the view that the votes of those Senators who favor limiting taxes and spending should always count more than the votes of other Senators. Votes under this constitutional amendment will be common because Congress continually confronts, as its main activity, fiscal policy questions. Thus, on a regular basis, this amendment will allow a minority of willful Members to obstruct the will of the majority on policy questions.

Our Founding Fathers would have considered this amendment to be dangerous. Many of them served under the Articles of Confederation, which contained numerous supermajority requirements on policy matters, and they thus saw firsthand the weakness of such a system. Hamilton commented extensively on this subject in the Federalist Papers. In Federalist No. 22, he wrote: "To give a minority a negative upon the majority (which is always the case where more than a majority is requisite to a decision) is, in its tendency, to subject the sense of the greater number to that of the lesser number . . . If a pertinacious minority can control the opinion of a majority, respecting the best mode of conducting it, the majority in order that something may be done must conform to the views of the minority; and thus the sense of the smaller number will overrule that of the greater and give a tone to the national proceedings. Hence, tedious delays; continual negotiation and intrigue; contemptible compromises of the public good." In Federalist No. 62, he went on to write: "But the most deplorable effect of all is that diminution of attachment and reverence which steals into the hearts of the people towards a political system which betrays so many marks of infirmity, and disappoints so many of their flattering hopes."

We agree with this analysis; it would be a grave mistake to put into the Constitution supermajority vote requirements for fiscal policy decisions. None of the great policy powers assigned to Congress under article I, sections 8 and 9 of the Constitution require more than simple majority votes. None of them should. We therefore urge our colleagues to oppose the motion to table.